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C.S.2000/

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

MISC. CIVIL CASE NO. 164 OF 2004 Single Bench

IN THE MATTER OF:-

APPLICANT

M/S ARTSONS ENGINEERING LIMITED a limited company duly registered under the relevant provisions of Company Act-1923, having its principal place of business at Agrawal Building, Ist floor, Waman tukaram Patil Marg, Opp. Shatabdi Hospital, Chembur, Mumbai 400 071 32, represented by the Chairman-cum-managing director Shri N.K.Jagesia, aged about 62 Years s/o Shri K.D.Jageshia R/o 203, Rajkutir, Linking road, Khar, Mumbai

P.R. No. 8059/04
Presented by Shri P.K. Jain
dated 16-7-04

VERSUS

NON-APPLICANTS

STATE GOVERNMENT OF C.G.
Through :-

1. The Secretary to the Government of C.G., Ministry of Panchayat and Gramin Vikas, Mantralaya, DKS Bhawan, G.E.Road Raipur C.G.
2. The Executive Engineer, and Member Secretary of Project Implementation Unit, Kawardha District Kawardha (Kabirdham) C.G.

16/7/04

APPLICATION UNDER SECTION 11 (6) OF ARBITRATION AND CONCILIATION ACT, 1996.

HIGH COURT OF CHHATTISGARH, BILASPUR

M.C.C.No.164 of 2004

M/s. Artsons Engineering Limited

Vs.

The Secretary to the Government
of Chhattisgarh and another

O R D E R
(in Chamber)

Post for 01.12 .2005

Sd/-
Sunil Kumar Sinha
Judge

Seen
Satish Gupta
Dy.GA.

HIGH COURT OF CHHATTISGARH, BILASPUR

Single Bench : Sunil Kumar Sinha, J
(in Chamber)

M.C.C.No.164 of 2004

M/s. Artsons Engineering Limited

Vs.

The Secretary to the Government
of Chhattisgarh and another

Appearance:
Shri P.K. Jain, counsel for the applicant.
Shri V.V.S. Murthy, Deputy Advocate General for the respondents.

ORDER
(01.12.2005)

(1) This application u/s 11(6) of the Arbitration and Conciliation Act 1996 (hereinafter referred to as the Act 1996) has been filed by the applicant for appointment of an Arbitrator to decide the dispute between the applicant and the respondents. The facts are that a contract agreement dated 12.2.2002 was entered into between the parties for the work of construction of rural roads, (Group no.24 Package No.C.G-09-03, District Kawardha) for an estimated cost of Rs.478 lakhs under *Pradhan Mantri Gram Sadak Yojna 2001-2002*. The aforesaid contract was terminated by the respondents vide their letter dated 24.11.2003. The applicant, therefore, vide his letter dated 16.1.2004 claimed a sum of Rs.2,69,90,262=70 as compensation of damages and loss on account of illegal termination of contract and when the same was not attended to, the applicant approached the Superintending Engineer under the terms of the agreement for settlement of disputes arose between the parties. When the

Superintending Engineer did not proceed to decide the dispute, the applicant appealed to the Chief Engineer as per the terms of the agreement and when the matter was not taken up for decision, this application u/s 11(6) of the Act has been filed on 16.9.2004.

(2) A reply to this application has been filed by the State. Though the State has disputed the merits of the claim by justifying the termination of the contract but vide para 7 of the reply, it has been submitted that there is an arbitration agreement vide Clause 29 and it can be invoked under certain conditions mentioned in this paragraph. Apart from the above grounds raised in the petition and the reply, learned counsel for the State submitted that since the Arbitration Tribunal has started functioning from 02.9.2005, therefore, the applicant should move the Tribunal for settlement of the dispute and this petition would not be maintainable.

(3) This question regarding maintainability of the petition was also raised earlier, before the Chief Justice in M.C.C.No.69/2003 and Hon'ble the Chief Justice vide his order dated 16.9.2005 passed in M.C.C.No.69/2003, alongwith 5 other Miscellaneous Applications filed u/s 11(6) of the Act, decided and held that since the Arbitration Tribunal constituted under the ***Chhattisgarh Madhyastham Adhikaran Adhiniyam 1983*** has started functioning with effect from 02.9.2005, but by the said date, the applications (those applications) were filed before the Court and a request was made to the Chief Justice to appoint an Arbitrator under section 11 of the Aforesaid Act, the proceedings pending before the Chief Justice prior to commencement of functioning of the Arbitration Tribunal stood saved under sub-section (2) of Sec.20 of the Chhattisgarh Madhyastham Adhikaran

Adhiniyam 1983. It was also held that the constitution and functioning of Arbitration Tribunal under the Chhattisgarh Madhyastham Adhikaran Adhiniyam w.e.f. 02.9.2005 would not be a bar for the Chief Justice to pass an order appointing an Arbitrator to the proceedings pending before him.

(4) In this view of the matter, this objection cannot be sustained and this application for appointment of an Arbitrator filed u/s 11(6) of the Act on 16.9.2004 would be maintainable.

(5) In the facts and circumstances of this case, when the presence of arbitration clause vide Clause 29 of the impugned agreement dated 21.2.2002 is admitted, I am of the opinion that an Arbitrator can be appointed to settle the dispute.

(6) Consequently, I hereby appoint Hon'ble Mr. Justice A.V.S. Murthy (Retired Chief Justice of High Court of Chhattisgarh) presently residing at Chennai (Tamilnadu) as the Sole Arbitrator in exercise of the powers conferred u/s 11(6) of the Arbitration and Conciliation Act 1996. This appointment shall be subject to his consent.

Sd/-
Sunil Kumar Sinha
Judge
01.12.2005

Rao